

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 4.12.1410 through) AMENDMENT
4.12.1420 relating to the virus-indexing)
program) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On October 6, 2007 the Montana Department of Agriculture proposes to amend the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on September 20, 2007, to advise us of the nature of the accommodation that you need. Please contact Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

4.12.1410 GENERAL (1) ~~Trees~~Plants and plant parts may be registered as rootstock and top-stock sources free from viruses, virus-like agents, viroids, phytoplasmas, and bacterial pests for the propagation of certified nursery stock when inspected, tested, and found to be true-to-name and discernibly free from harmful virus and virus-like diseases by procedures outlined in this program.

(2) Certification verifies that ~~proper field sampling procedures were followed and that the indexing results indicated are those determined by an approved governmental agency designated to test for virus diseases in nursery stock.~~ "International Standards for Phytosanitary Measures" were implemented by an official certifying agency to ensure that the probability of the introduction of regulated pests is reduced to an acceptable level, reducing economic impacts and providing for equitable and orderly trade.

(3) This standard does not include certification of nonpest related items such as trueness-to-type and quality grades and standards.

(3) remains the same, but is renumbered (4).

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: This rule change will expand the types of diseases from viruses and virus-like diseases to include virus-like agents, viroids, phytoplasmas, and

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bacterial pests and includes plants and plant parts rather than just trees. The rule also amends procedures to be in conformance with internationally recognized standards and phytosanitary measures to be followed. These changes are necessary to meet changing global market and export requirements. The Montana virus indexing program no longer meets the international standards for phytosanitary measures.

4.12.1411 DEFINITIONS (1) "Blue Tag Certification" means an official certification tag issued by the department indicating that the plant or plant part has been inspected and tested in accordance with the provisions of this program.

(2) "Department" means the Montana Department of Agriculture.

(3) "Good horticultural condition" means a condition that reduces the risk of infestation by a quarantined pest, including good sanitary practices.

(4) "Indicator plant" means any herbaceous or woody plant used to index or determine virus infection. "Import permit" means an official document issued by a national or regional plant protection organization of the importing country authorizing importation of a commodity in accordance with specified phytosanitary measures.

(4) (5) "Virus-infected Infected (affected)" means the presence of a harmful virus(es) or virus-like disorders, viroids, phytoplasmas, and bacteria in a plant or plant part.

(6) "Inspection" means official visual and/or diagnostic examination of plants, plant products, or other regulated articles to determine if pests are present and/or to determine compliance with phytosanitary regulations.

(7) "International Standard for Phytosanitary Measures (ISPM)" means an international standard adopted by the Conference of FAO, the Interim Commission on Phytosanitary Measures or the Commission on Phytosanitary Measures, established under the International Plant Protection Convention.

(40) (8) "Montana certified fruit tree nursery stock" means nursery grown seedlings, or clonal rootstocks originating from registered trees plants or plant parts and nursery grown trees plants propagated by using top-stock from registered trees and rootstock originating from registered trees except as herein provided for certain rootstocks.

(44) (9) "Montana certified fruit tree seed" means seed produced on registered seed trees or commercial seed having been tested and found to have a transmissible virus content that does not exceed five-percent 5% for ilarviruses and is found negative for Plum Pox Virus.

(10) "Mother trees" means base plant material used for the production of certified plant material, which is tested at a rate of 10% each year and maintained under continuous surveillance.

(11) "NAPPO" means North American Plant Protection Organization.

(12) "National Plant Protection Organization (NPPO)" means official service established by a government to discharge the functions specified by the International Plant Protection Convention.

(13) "Official" means established, authorized, or performed by a national plant protection organization.

(3) remains the same, but is renumbered (14).

(15) "Pest" means any species, strain, or biotype of plant, animal or pathogenic agent injurious to plants or plant products.

(16) "Phytosanitary Certificate" means the use of phytosanitary measures that prevent the introduction or spread of a quarantined pest, which leads to the issuance of a certificate attesting to those measures.

(17) "Prohibited" means a phytosanitary regulation forbidding the importation or movement of specific pests or commodities.

(6) (18) "Registered tree" means that a registration number, approved by the department, has been assigned by the department to a tree or clonal planting that has been inspected and tested in accordance with the provisions of this program.

(19) "Regulated Pest" means a quarantine pest or a regulated nonquarantine pest.

(7) through (9) remain the same, but are renumbered (20) through (22).

(23) "Test" means official examination, other than visual, to determine if pests are present or to identify pests.

(5) (24) "Virus Index indexing" means to determine virus infection by means of inoculation from the plant to be tested to an indicator plant or by any other an approved method.

(2) (25) "Virus-like" means a disorder of genetic or non-transmissible origin and also includes mycoplasma-like organisms and rickettsia-like organisms. manifest on the plant as disease symptoms, as a result of suspected graft transmissible diseases of an unknown type.

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: These new changes are necessary to add new definitions, update definitions, and deletes one definition to provide clarity to terminology used in the rules, and to meet international requirements for virus indexing standards and phytosanitary measures.

4.12.1412 REQUIREMENTS (1) All plant material susceptible to Plum Pox Virus (PPV) must come from an area declared to be free of PPV based on official surveys and protocols as recommended by the NAPPO.

(2) To prevent the introduction or spread of regulated pests, the importation and movement of host materials will be either prohibited or restricted.

(3) An import permit must be obtained by the importer if required.

(4) The department may issue a phytosanitary certificate if required by the importing NPPO.

(4) (5) Eligibility will be conferred if the nursery has met program conditions. The applicant nurseryman shall be responsible, subject to the approval of the department, for the selection of the location and the proper maintenance of registered plantings being grown under the provisions of this program. The applicant nurseryman shall be responsible and for maintaining the identity of all nursery stock entered in this program in a manner approved by the department. Any planting entered in this program shall be kept in a thrifty growing good horticultural condition and free of plant pests.

(6) Detailed records of all related paperwork, including species, variety, source of plant material, year of propagation, and areas of distribution in the nursery or plantation must be kept by the participant and made available upon request to the department.

(2) (7) There shall be no budding, grafting, or top-working of registered trees in any scion-block, seed-block, or stool-bed, unless under the supervision of the department for the purpose of virus indexing.

(3) (8) Any plant found to be affected by a virus or virus-like disease or if off-type shall be removed and destroyed immediately, by a method approved of by the department, from any planting following notification by the department.

(9) Approved management strategies for vector control shall be maintained by the applicant, which may include site selection, crop rotation, soil disinfections, cleanliness of equipment, selection of stock, biological antagonists, and postplanting management.

(10) Registered material must originate from National Research Support Project 5 (NRSP-5) registered stock, or from foundation trees in the case of scion-blocks, and certified stock in the case of seed-blocks and stool-beds. The following nomenclature shall apply to all registered material, as recommended in the NAPPO's Regional Phytosanitary Standards Measures #25:

(a) Generation 1 (formerly Nuclear);

(b) Generation 2 (formerly Elite);

(c) Generation 3 (formerly Foundation); and

(d) Generation 4 (or Certified).

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: This rule change describes the conditions and requirements that companies involved in virus indexing must meet in order to meet export market conditions and requirements. All plant material must be imported from a Plum Pox Virus-free area and all registered materials must come from registered stock, foundation trees, or certified stock. Movement of imported materials is restricted or prohibited to prevent the introduction or spread of disease, must be grown and maintained in good horticultural conditions using approved management strategies, and must meet internationally accepted standards. If plant materials are found to be affected by viruses or virus-like diseases, they must be removed and destroyed using department approved methods. Scion-block, seed-block, and stool-bed plant materials may only be propagated for virus indexing purposes and must be done under the supervision of the department. Applicants must maintain detailed records related to virus indexing. Such records must be available to the department upon its request. This rule was updated to meet new international standards and phytosanitary measures.

4.12.1413 SCION-BLOCKS (1) A registration number approved by the department will be assigned to each registered scion tree.

(2) Only registered trees are permitted in a registered scion-block.

~~(1)~~ (3) Location. Registered *Prunus* trees A scion-block shall be located ~~not less than at least~~ 100 feet from any nonregistered cultivated plant of the Rosaceae family. *Prunus* tree. *Chaenomeles*, *Cydonia*, *Crataegus*, *Malus*, *Pyrus*, and *Sorbus* trees must be located at least 60 feet from any nonregistered plant of the Rosaceae family, and known or potential host plants in the field, under protected cultivation, or in the wild. The ground in a scion-block and for a distance of 20 feet surrounding it shall be kept either clean cultivated or in an approved, properly controlled ground cover. Registered scion-block trees shall be planted and maintained in a manner and at sufficient distance that branches of different varieties do not overlap. Care shall be taken in the use of ~~pollinizing~~ pollinating insects and pollen application to prevent the transmission and spread of virus diseases through the use of infected pollen and/or its application. Registered scion-block trees shall not be used for propagation purposes until trueness-to-name has been established. Each tree shall bear a permanent registration number.

~~(2)~~ (4) Acceptability. The rootstock and top-stock sources of the scion-block trees shall have originated from ~~foundation~~ Generation 3 trees established under this program or from virus-tested trees originating through the Inter-regional Project No. 2 (IR-2) ,now known as National Research Support Project-5 (NRSP-5) or other departmentally approved virus-tested sources. If the tree is scion-rooted, its source shall have met the above requirements. ~~Only registered trees shall be permitted in the scion-block.~~

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: This rule describes requirements for scion trees. Each tree must be assigned a department approved registration number. This rule updates the list of known and potential disease host plants and specifies the distances these plants must be from single or blocks of registered scion trees. This rule also updates terminology and standards. This rule is being updated to meet current importing country requirements and international standards.

4.12.1414 SEED-BLOCKS (1) A registration number approved by the department will be assigned to each registered seed tree.

(2) Only registered trees are permitted in a registered seed-block.

~~(1)~~ (3) Location. A ~~Prunus~~Registered *Prunus* seed-blocks shall be located ~~not less than at least~~ 300 feet from any nonregistered flowering plant of the ~~Prunus~~ *Prunus* plants. The ground in a seed-block and for a distance of 20 feet surrounding the seed-block shall be kept clean cultivated or in an approved, controlled ground cover. Care shall be taken in the use of ~~pollinizing~~ pollinating insects and pollen application to prevent the transmission and spread of virus diseases through the use of infected pollen and/or its application. Each tree shall bear a permanent registration number.

~~(2)~~ (4) Acceptability. The rootstock and top-stock sources of the seed-tree shall have originated from ~~foundation~~ Generation 4 trees, ~~established under this program or from virus-tested trees originating through the Inter-regional Project No. 2 (IR-2)~~ NRSP-5, or other departmentally approved virus-tested sources. If the tree

is scion-rooted, its source shall have met the above requirements. ~~Only registered trees shall be permitted in the seed-block.~~

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: This rule requires that only registered trees are permitted in a registered seed-block and specifies the distance that known or potentially known disease host plants must be from a registered seed-block. This rule has been updated to meet current import country requirements and international standards.

4.12.1415 STOOL-BEDS (1) Only registered trees are permitted in the registered stool-bed.

~~(1) (2) Location. A Registered stool-beds shall be located not less than at least 50 feet from any nonregistered cultivated plant of the Rosaceae family. The following exception will apply. Nonregistered stool-beds may be located no less than 10 feet from registered stool-block plantings. known or potential host plants in the field, under protected cultivation, or in the wild. The ground in a stool-bed and for a distance of ten feet surrounding it shall be kept clean cultivated, or in an approved, controlled ground cover.~~

~~(2) (3) Acceptability. Existing stool-beds that index clean on the commonly used virus indicators will qualify as Registered Stool-beds. New stool Stool-beds (those planted after effective date of these rules) shall have originated from foundation Generation 4 stock established under this program, or from virus-tested plants originating through the Inter-regional Project No. 2 (IR-2). NRSP-5 or other departmentally approved virus-tested sources. If the tree is scion-rooted, its source shall have met the above requirements. Only registered trees shall be permitted in the stool-bed.~~

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: This rule requires that only registered trees are permitted in a registered stool-bed and specifies the distance that known or potentially known disease host plants must be from a registered stool-bed. This rule has been updated to meet current import country requirements and international standards.

4.12.1416 NURSERY STOCK (1) Rootstocks. All stone and pome fruit nursery stock being grown for Blue Tag Certification shall be produced on certified rootstocks, from registered trees except for stone fruit trees grown on peach seedlings and pome fruit trees grown on apple and pear seedlings. These seedling rootstocks, when grown from commercial seed, will be acceptable if seed transmissible virus content does not exceed five percent. Clonal rootstocks used in the production of Montana Certified Blue Tag Nursery Stock must originate from Registered Stool registered stool-beds. Certified rootstock may be produced in any one of the following manners:

(a) rootstock grown from seed produced on registered trees;

(b) clonal rootstock produced from registered stool-beds;
(c) rootstock originating from other approved certification programs; or
(d) rootstock from seed of U.S. origin having been tested and found to have a transmissible virus content that does not exceed 5%.

~~(2) Location.~~ Nursery stock being grown for certification shall be at least 50 feet from nonregistered known or potential host plants in the field, under protected cultivation, or in the wild, and at least 20 feet from other noncertified nursery stock, and planted sufficiently apart to maintain its identity and shall be kept clean cultivated. ~~or in an approved, controlled ground cover.~~ Such nursery stock ~~it~~ shall be designated as to rootstock, top-stock, and interstock sources. There shall be no rebudding or regrafting of nursery row stock unless such stock is reworked with scions from the original registered scion-tree.

~~(3) Seed.~~ Certified seed shall have been produced on ~~Registered Seed Trees~~ registered mother trees, or grown from commercial seed having been tested and found to have a transmissible virus content of ilarviruses that does not exceed five percent 5%.

~~(4) Tagging.~~ A Blue Tag shall designate trees produced from ~~Registered Scion~~ registered scion-source trees and which have been propagated on rootstocks produced from ~~Registered Seed~~ registered seed sources ~~or Stool stool-bed trees bed trees;~~ or which are self-rooted.

~~(5)~~ All nursery stock meeting the requirements of this program when sold shall have the variety, interstock, and rootstock designated where applicable as follows:

- (i) √ variety/interstock/rootstock; and
- (ii) Blue Tag Certificate.

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: This rule requires that all nursery stock grown for Blue Tag Certification be produced on certified rootstock. This rule describes the methods by which certified rootstock may be produced and the distance requirements such stock must be from known or potential disease host plants and the distance from other noncertified nursery stock. This rule clarifies requirement of certification and updates language to meet international requirements.

4.12.1417 INSPECTION PROCEDURE (1) Inspections will be made only by the ~~Montana department of agriculture~~ and at times when specific diseases are most likely to be expressed.

~~(2) Inspection of Nursery Stock for Certification.~~ At the request of the department, any undesirable rootstock shall be rogued before propagation. At least one visual inspection shall be made of nursery rootstock in a planting for certification during the first growing season. At least two visual inspections shall be made during the growing season following bud or graft placement and for transplants or second and third year seedlings for all certified nursery stock. ~~At the request of the department any undesirable rootstock shall be rogued before propagation. At least~~

~~two visual inspections shall be made of nursery stock during the growing season following bud or graft placement.~~

(3) The department shall refuse certification in part or all of a planting if plants have been propagated from registered trees determined to be affected by a virus or virus-like disease or if other requirements of this program have not been met.

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: This rule requires the rouging of undesirable rootstock prior to propagation and describes the type, number, and timing of visual inspections for certified nursery stock. Changes to this rule allow the virus indexing to meet new international standards.

4.12.1418 TESTING PROCEDURES (1) Testing procedures prescribed in this program shall conform to ~~IR-2~~ NRSP-5 standards or to any other acceptable and approved procedures developed and used for determining the presence of virus diseases in nursery stock.

(2) Sample collection and submission for testing will be done under the direct supervision of the department.

(3) Transmissible virus testing of *Prunus* material will be conducted once every three years on all registered mother trees and all registered stool-beds for Plum Pox Virus, for ilarvirus every year, and any other testing on an ad hoc basis resulting from symptoms observed during inspection, traceback results, or other just causes for concern. Monitoring will include surveys of the rootstock, budwood, seeds, and fruit.

(4) Upon request, diagnostic test results, test methodologies, and a list of pests will be provided to the department and the importing NPPO. Tests should be approved by the NPPO of the importing country.

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: This rule identifies the updated standards that govern testing procedures. It requires testing once every three years for all registered trees and stool-beds for Plum Pox Virus, testing every year for ilarvirus, and other testing as needed based on disease symptoms noted during inspections, for traceback results or other just causes. Tests should meet National Plant Protection Organization requirements of the importing country. A list of pests, diagnostic test methodologies, and diagnostic results must be made available to the department upon its request. The current virus indexing program does not meet the March 2002 international standards for phytosanitary measures.

4.12.1419 CERTIFICATION OF GROWING SITES (1) ~~Application.~~

~~(a)~~ Application forms will be provided by the ~~Montana~~ department of agriculture.

(a) The applicant ~~nurseryman~~ shall furnish to the department all information pertinent to the operation of this program and shall give ~~his~~ their consent to the department to take ~~propagating wood~~ plant parts from any tree for testing purposes.

(b) Application for inspection and testing of registered scion, seed, and stool-bed trees, and for inspection of nursery stock for certification shall be filed by June 1 of each year with the ~~Montana~~ department of agriculture.

~~(2) Fees.~~

~~(a)~~ (2) The application fee shall be ~~\$100.~~ \$250, with a late fee of \$25 if filed after June 1 of each year.

~~(b)~~ (a) Inspection fees will be charged according to the actual costs incurred on a per inspection basis, including but not limited to mileage, per diem, and an hourly rate as determined by rule.

(b) remains the same.

AUTH: ~~80-7-112, 80-1-102, 80-7-402,~~ MCA

IMP: ~~80-7-111, 80-7-112~~ 80-7-122, 80-7-402, MCA

REASON: This rule changes the application fee from \$100 to \$250 and provides for a late fee of \$25 if filed after June 1 of each year. This rule adds an inspection fee based on actual costs incurred. Inspection costs include mileage, per diem, and an hourly rate determined by Administrative Rule. The hourly charge is currently \$20 per hour with a one hour minimum as set in ARM 4.12.1405(1)(c) and (v). Fees are necessary to support services required for virus indexing activities and certification.

Economic Impact Statement: The expected revenue the department expects to receive is \$250 per year total. The number of persons affected is one, Lawyer Nursery. Economic impact to Lawyer Nursery due to increased fee is \$150 per year. The expected benefit to Lawyer Nursery is over \$2 million in sales per year.

Lawyer Nursery, the primary beneficiary of a rule change, has reviewed the recommended revisions to the Virus Indexing Program. Most of their comments have been incorporated into the revision of the ARM.

The revisions have been reviewed by the USDA and the Canadian Food Inspection Agency (CFIA). The Canadian Food Inspection Agency must approve the revisions. Canadian approval is contingent upon having an "approved virus certification program" if our growers ship *Prunus* spp. to Canadian customers.

4.12.1420 TAGGING AND IDENTITY (1) ~~Tagging.~~ The department will authorize the use of official certification tags for the identification of nursery stock or seed that meet the requirements of this program. Each tree, seedling, bundle, or seed lot must have affixed one of these tags. These tags will be supplied by the ~~Montana~~ department of agriculture to all members participating in this program. Participating members will reimburse the department ~~of agriculture~~ for all certification tags supplied. This reimbursement will be based on the actual cost incurred by the ~~Montana~~ department of agriculture.

(2) ~~Identity.~~ Any person selling Montana certified fruit tree nursery stock is responsible for the identity of the stock bearing each tag and for such nursery stock

meeting the requirements of this program. Persons issued tags authorized by the program shall account for stock produced and sold and keep such records as may be necessary.

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-119~~, 80-7-402, MCA

REASON: This rule requires an identification tag be affixed to each tree, seedling, bundle, or seed lot in the virus indexing program. The rule amends this rule to meet 2002 international standards for phytosanitary measure.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than October 4, 2007.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. A written request for hearing must be received no later than October 4, 2007.

6. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Less than 10% of the public is directly affected, based on the fact that only one nursery exports virus indexed nursery stock.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Amendment is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the Notice

conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

DEPARTMENT OF AGRICULTURE

/s/ Joel A. Clairmont
Joel A. Clairmont, Acting Director

/s/ Gregory H. Ames
Gregory H. Ames
Rule Reviewer

Certified to the Secretary of State, August 27, 2007.